

In the
Supreme Court of the United States.

Supreme Court, U. S.
FILED

DEC 21 1977

MICHAEL RODAK, JR., CLERK

OCTOBER TERM, 1977.

No. 77-69.

ROBERT A. PANORA, REGISTRAR OF MOTOR VEHICLES
OF THE COMMONWEALTH OF MASSACHUSETTS,
APPELLANT,

v.

DONALD E. MONTRYM, ET AL.,
APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS.

Appellant's (1) Response to Appellee's Motion to Vacate,
and (2) Motion for Summary Reversal.

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Introduction.

In this case the Massachusetts Registrar of Motor Vehicles
appeals a decision of a three-judge district court invalidating
the state's "implied consent" or "breathalyzer" statute on

due process grounds. The history of this appeal is somewhat unusual. Consequently, the Massachusetts Attorney General, on behalf of the appellant Registrar, wishes to draw the Court's attention to the following chronology.

(1) On March 25, 1977, the United States District Court for the District of Massachusetts, by 2-1 vote, filed its opinions invalidating the state statute.

(2) On May 4, that court entered final judgment upon the majority opinion.

(3) On May 13, the appellant Registrar filed his notice of appeal to the United States Supreme Court.

(4) On July 12, the appellant Registrar filed in the United States Supreme Court his Jurisdictional Statement, including at page 12, footnote 9, the information that he had moved the district court to stay judgment and to modify judgment in light of the intervening decision of *Dixon v. Love*, 431 U.S. 105 (1977).

(5) On October 7, the Massachusetts Attorney General's office received from the district court copies of its further opinions and order issued on October 6 and addressing the decision of *Dixon v. Love*.

(6) On October 11, the Attorney General's office received a copy of a letter dated October 7, 1977, from appellee Montrym's attorney to the Clerk of the Supreme Court covering an enclosure of 10 copies of the further opinions and order of the district court rendered on October 6.

(7) On October 26, the Attorney's General's office received a copy of a letter from Montrym's attorney to the Clerk acknowledging his refusal to transmit the October 6 district court material to the Court. We had not received a copy of an intervening letter of October 14 to this effect and were unaware of the nontransmittal until October 26.

(8) On October 31 we learned from press inquiries that the Supreme Court had vacated the judgment of the district

court and remanded the case to it for further consideration in light of *Dixon v. Love*. We received formal notice of the decision from the Court on November 4.

(9) Since the Court's decision of October 31, the Massachusetts Registrar, upon the advice of the Attorney General, has withheld enforcement of the state's implied consent statute and abided by the terms of the district court's decisions until further disposition of the case. We have proposed in writing to Montrym's attorney that the parties appear before the three-judge district court for some guidance.

(10) Montrym's attorney has filed a now pending motion to vacate the court's judgment of October 31 and included, *inter alia*, the district's court's further opinions.

We explain the sequence of events particularly to respond to representations included at pp. 3-4 and nn. 1-2 of Montrym's pending motion to vacate. The tenor of these remarks is that the Massachusetts Attorney General intentionally failed to inform the Court of the district court's further opinions of October 6, addressing the decision of *Dixon v. Love*. The statement in footnote 1 is inaccurate.

The Massachusetts Registrar of Motor Vehicles continues to comply with the decisions of the district court, and the Attorney General stands ready to assist the Supreme Court in any further consideration of this case.

Response to Appellee's Motion to Vacate Judgment and Motion for Summary Reversal.

In light of the foregoing chronology and in response to the appellee's pending motion to vacate judgment, the appellant Registrar moves that the Court summarily reverse the decision of the district court or, in the alternative, set the case for plenary consideration.

As grounds therefor the Registrar says that the case has reached a conclusion in the district court, and that the majority of the district court have misapplied the law of *Mathews v. Eldridge*, 424 U.S. 319 (1976), and *Dixon v. Love*, 431 U.S. 105 (1977), for the reasons set out in pages 12-16 of the Jurisdictional Statement and in the opinions of the dissenting judge of the district court. For the reasons also stated in the Jurisdictional Statement the case presents a substantial question.

Conclusion.

The present case is fit for final disposition. The appellant respectfully urges the Court to reverse summarily the decision of the district court or to set the case for argument.

Respectfully submitted,

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